IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4910 OF 2005

Sarang Vishwanath Joshi .. Petitioner

Versus

B.D.Kadam and Anr. .. Respondents

Mr.Rajiv Matkar for petitioner
Mr.A.H.Palekar, A.G.P. for respondent No.1
Mr.Vivek Salunke for respondent No.2
Mr.P.S.Dani for respondent Nos. 3 and 4.

WITH

WRIT PETITION NO.549 OF 2006

Ashok Ramrao Palande & Ors. .. Petitioners

Versus

Dyaneshwar Maharaj Sansthan

Committee and Ors. .. Respondents

Mr.Shriram S. Kulkarni for petitioners
Mr.P.S.Dani for respondent Nos. 4 and 5
Mr.A.H.Palekar, A.G.P. for respondent Nos. 6 to 8

CORAM : S.C.DHARMADHIKARI, J.

DATE : 7th April 2006.

ORAL JUDGEMENT:

. By these petitions filed under Articles 226 and 227 of the Constitution of India, the petitioners are challenging the order of the Dist.Judge, Pune dated 16th July 2005 which is in the following terms:-

> ". In exercise of powers conferred on me by Rule 3 and 3A of the Scheme of the Trust, the Chief Trustee and/or other Trustees of the Trust are directed to submit the list of 5 eligible persons (five persons for each vacancy of the trustee after discharging one temporary

> trustee, on or before 27th July 2005, failing which the said one vacancy will be filled up by considering the list of persons already submitted by the Chief Trustee. Two vacancies of the trustees will be simultaneously filled in by re-appointment of Shri Sudhakar Waman Joshi and Shri Pratap Sarjerao Jadhav as per the resolution No.4427 of the Trust by discharging the first temporary trustee."

2. The effect of the above is that list of five eligible persons for filling up the vacancy has to be forwarded by the Trust Shree Dyneshwar Maharaj Sansthan, Alandi and two vacancies of Trustees will be simultaneously filled in by re-appointment of Mr.Sudhakar Waman Joshi and Pratap Sarjerao Jadhav.

3. As far as first aspect is concerned, it is not in dispute that the direction of learned Dist.Judge is in consonance with the scheme whereas the other direction of re-appointment is something which is seriously challenged and is subject matter of lengthy submissions before me.

4. Rule in both petitions. Respondents waive service. By consent rule made returnable forthwith. Heard learned Counsel appearing for parties.

5. The facts in Writ Petition No.549 of 2006 would be of assistance for appreciating rival contentions.

6. On 11th December 1937 the Dist.Court in Civil Suit No.7of 1934 settled the scheme for the management of the sansthan, framed in 1852, by issuing directions necessary to supplement the

scheme. The scheme came to be modified by the said directions. On 16th November 1939 the scheme modified by the Dist.Court in abovesaid suit came to be further modified with regard to clause (3) and further clause (3a) is inserted. Earlier, clause (3) modified by the Dist.Court contemplated that any vacancy can be filled by appointment by Dist.Judge from amongst nomination for cooption by the committee. However, the said clause came to be modified and it was clarified that Dist.Judge acts "persona designata" and he will fill up vacancy in the Committee from among those nominated for cooption by committee provided that the committee to nominate not less than five names for each vacancy that may occur and further the Dist.Judge is also conferred with a power to call for further names from trustees if necessary. Clause 3(b) prescribed maximum age limit of 71 years. Further, clause (3a) came to be inserted by consent whereby maximum tenure was prescribed for office of trustee which was not

provided earlier by Dist.Court and further continuation of tenure is permitted beyond the period of seven years provided he is re-appointed.

7. In view of this background, it is clear that Dist.Judge is vested with power of appointment by selection out of list of minimum five persons nominated by committee and if he is not satisfied with said list of nominated candidates, then, he has power to call for further list. Further by virtue of clause (3a) tenure comes to an end upon expiry of seven years, provided trustee is not re-appointed. In short, it is incumbent upon the learned Dist.Judge to follow the procedure envisaged in the scheme for appointment/ re-appointment failing which appointment/ re-appointment is not valid.

8. Mr.Ramchandra Nagesh Gohal came to be

appointed and he retired with effect from 1st August 2001 on completion of seven years tenure. Thereafter, according to the petitioners, a resolution is passed by the then trustees and they recommended five names for appointing one trustee in the vacancy of Mr.Gohal vide Resolution dated 5th October 2001. On 20th October 1996 one Mr.S.V.Joshi came to be appointed as trustee of the respondent No.1 for a period of seven years and his term of appointment was to expire by end of 19th October 2003. Similarly, the respondent No.5 Mr.Jadhav came to be appointed on 21st November 1996 for a period of seven years and his term was to expire on or before 9th November 2003.

9. Thereafter, on 20th October 2003, respondent No.1 in its meeting passed various resolutions. The respondent No.1 passed a resolution at subject No.4427. It is specifically mentioned in the said resolution

that the period of respondent Nos. 4 and 5 viz., Mr.Joshi and Jadhav was expiring on 13th October 2003 and 8th December 2003. It further mentions that Mr.Joshi has applied for re-appointment. Therefore, there was a discussion in the meeting regarding their re-appointment. The respondent No.1 vide its resolution No.4427 resolved that they will apply for re-appointment for the respondent Nos. 4 and 5 as trustees to the Dist.Judge, Pune.

10. The learned Dist.Judge passed order observing that respondent No.4 Mr.Joshi shall stand retired with effect from 21st October 2003 afternoon. The proposal of his re-appointment is turned down by him. The Dist. Judge vide order dated 5th December 2003 further noted retirement of respondent No.5 Mr. Jadhav with effect from 8th December 2003 and the proposal of re-appointment was turned down by him. The Dist.Judge vide letter dated 4th June 2004 called

upon the Trust to forward list of candidates for appointment/re-appointment as trustee i.e. for filling of vacancies. It is a matter of record that the then Chief Trustee viz., Dr.Suresh Garsole prepared list of 24 persons for appointment as Trustee and forwarded it to the learned Dist.Judge Pune. On 24th January 2005, the Dist.Court called upon the respondent No.1 to forward list of candidates.

11. On 28th January 2005, the then Chief Trustee Ashok Chandgude filed an application under section 47 of the Bombay Public Trusts Act, 1950, before the Charity Commissioner, Maharashtra. Same was not accepted by him. On 22nd February 2005 the then Chief Trustee filed writ petition No.1065 of 2005 for seeking direction to learned Charity Commissioner to hear and decide application under Section 47 of the Bombay Public Trust Act. This Court passed an interim direction on 4th March 2005 directing

Charity Commissioner to hear and decide the application under Section 47. The Charity Commissioner vide his judgement and order dated 1st April 2005 disposed off application under section 47 of the Bombay Public Trust Act. It appears from the order passed by him that he has gone through the scheme and according to clause (3) he has interviewed 24 persons and out of the list of 24 persons sent by the respondent No.1 he has appointed the present petitioners as a stop gap arrangement till the vacancy is filled by the Dist.Judge, Pune.

12. Thereafter, it is the grievance of petitioner, that the Dist.Judge overlooked the earlier orders dated 21st October 2003 and 5th December 2003 passed by the then Dist.Judge and further ignored clause 3 and gave effect to the resolution No.4427 of re-appointment of respondent Nos. 4 and 5 vide the impugned order.

13. Before proceeding further, it is necessary to deal with the preliminary objection which was raised by Mr.Dani appearing for the persons re-appointed as Trustees viz., Mr.Joshi and Jadhav. His submission is that a writ petition under Article 226 of the Constitution of India would not lie as respondent Nos. 1 and 2 viz., Dist.Judge and the Trust are not amenable to writ jurisdiction. They cannot be said to be "State" or "Other Authority" within the meaning of Article 12 of the Constitution. That apart, his submission is that the order passed by the learned Dist.Judge cannot be said to be quasi judicial or judicial so as to be amenable to writ or supervisory jurisdiction. His further contention is that the order impugned in the petitions is passed by the learned Dist.Judge, Pune as "persona designata". The said order is in accordance with the provisions contained in a scheme framed pertaining to administration and management of the said Trust. It cannot be said

to be a quasi judicial or judicial order. In these circumstances, writ petition would not lie.

14. Without prejudice to the above submissions, Mr.Dani submits that the writ petition should be dismissed because it purports to interfere with the internal management of the Trust. The question involved in the petition is with regard to validity or otherwise of sanction for re-appointment of two Trustees and such question cannot form subject matter of a writ petition. It is well settled, according to Mr.Dani, that internal administration of a Trust cannot be made subject matter of writ petition under Article 226 or 227 of the Constitution of India, nor can this Court supervise the administration and management of a Trust. There are no rights much less fundamental or legal of any party to the petition involved and when the authority exercised its power in accordance with the scheme framed for management and

administration of the Trust, then, it is not for this Court to interfere. He submits that apart from this, petitioners have not approached this Court with clean hands. They are not challenging resolution dated 26th October 2003 passed by the Trust re-appointing the said Joshi and Jadhav. They could have assailed this action independently and while challenging the order of district Judge Pune, they cannot re-open the resolution which has attained finality and which is in force for the past nearly three years. In these circumstances, when the petitioners are silent with regard to this resolution, then, they cannot assail the order of Dist.Judge and the petitions be dismissed as it is an abuse of the process of this Court with heavy compensatory costs.

15. As far as the first contention of Mr.Dani is concerned, at first blush, there appears to be some substance in it. However, in the facts and

circumstances of this case it is clear that when the Dist.Judge is exercising powers under a scheme for administration and management of Public Charitable Trust and the scheme is traceable to a statute holding the field viz., Bombay Public Trust Act, 1950, then an order passed by him can be challenged in writ jurisdiction. The scheme making power is conferred under section 50A of the Trust Act, 1950. Thereafter, the management and administration is to be in accordance with the scheme. It is equally true that a clause in the scheme may be empowering the authorities stipulated thereunder to appoint or re-appoint trustees but when they carry out such exercise, it cannot be said that they are acting under the scheme alone and, therefore, their actions are not amenable to challenge in writ jurisdiction of this Court. In the case of Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust and Ors.

Vs.V.R.Rudani and Ors, reported in A.I.R. 1989 S.C. 1607, the Supreme Court, with regard to maintainability of a writ petition seeking relief of similar nature, has observed thus:-

> "..... Article 226 confers wide powers on the High Court to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose". The term "authority" used in Article 226, in the context must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcemenet of fundamental rights under Art.32. Article 226 confers powers on the High Courts to issue writs for enforcement of the

fundamental rights as well as non fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory auhorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owned by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied. It may be pointed out that mandamus cannot be denied on the ground that the duly to be enforced is not imposed by the Statute. The judicial control over the fast expanding maze of

> bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found." Technicalities should not come in the way of granting that relief under Article 226."

16. The above passage is quoted in a large bench decision (five Judges) of the Supreme Court in the case of Zee Telefilms Ltd. Vs. Union of India, reported in (2005) 4 S.C.C. 649 and the majority view therein is that:-

> "33. Thus, it is clear that when a private body exercises its public functions even if it is not a State, the

> aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226. Therefore, merely because a non-governmental body exercises some public duly, that by itself would not suffice to make such body a State for the purpose of Article 12. In the instant case the activities of the Board do not come under the guidelines laid down by this Court in Pradeep Kumar Biswas case (2002) 5 SCC 111, hence there is force in the contention of Mr.Venugopal that this petition under Article 32 of the Constitution is not maintainable."

Further the minority view is also not in conflict as far as this aspect is concerned (See paras 151, 158 and 159). Thus, with regard to a public

charitable trust a scheme being framed under the powers conferred by the Bombay Trust Act and the power under it is conferred on Dist.Judge, a Judicial Authority, the said exercise being statutory in character, it cannot be said that while such scheme is being implemented, then, actions in that behalf are totally incapable of being challenged in writ jurisdiction.

17. In the facts of this case, it is well known that the Trust in question viz., Dyneshwar Maharaj Sansthan at Alandi Pune is a Public trust which is set up and established and thereafter registered under the Trust Act. Dyneshwar Maharaj is like a Deity. Lakhs of people visit the temple of this Deity and offer Pooja and seek blessings. They travel from all parts of the country to the birth place of this Great Saint. His works are respected all through out the world. He was known as a Genius, although, he died at a very young age of 21 years. Whenever

affairs of such a trust are being managed and administered and for that purpose a high official viz., the Dist.Judge is chosen, then, it is but natural that he performs a public duty. He has to exercise powers for public good and in public interest. If a challenge is raised to any action or order of the Dist.Judge on the ground that it is not in the interest of the Trust and for benefit of the devotees, then, in an appropriate case, it cannot be said that writ jurisdiction is not to be exercised at all. More so, when he has to choose or select trustees, from the list submitted. Such a selection casts a duty upon him to act judiciously and in the interest of public trust and people, who are real beneficiaries.

18. It may be true as suggested by Mr.Dani that nobody has a vested right to seek appointment as a Trustee. However, if the clauses in the scheme are empowering Dist.Judge

to make appointment and the challenge is that the appointment is not in accordance therewith, then, merely because the petitioners have no vested right to be appointed as a Trustee it cannot be said that a writ petition would not lie at their instance. Ultimately, as persons having interest in the affairs of the Trust and/or seeking appointment as Trustees, they can invoke this Court's jurisdiction under Article 227 of the Constitution of India. More so, when the order of the Dist.Judge affects a public charitable Trust. These observations have been made by me because nothing has been brought to my notice by parties which would suggest that the abovementioned observations of the Supreme Court are no longer good law or binding upon this Court. The larger issue as to whether respondent No.1 can be said to be a "State" or "Other Authority" within the meaning of Article 12 or not need not be considered, once the ambit and scope of the power of this Court under Article

226 of the Constitution of India has been discussed above.

19. Thus, I am unable to uphold the preliminary objection of Mr.Dani about maintainability of the petition.

20. As far as the objection with regard to there being suppression of material facts and no challenge to the resolution of the Trust of 2003, in my view, ultimately, the matter must be looked at in the backdrop of a scheme framed for administration and management of the Public Trust in question. If the appointing authority is stipulated in the scheme itself and he has been given all such powers as are necessary for proper, efficient management and administration of the Trust, then, merely because Trustees pass some resolution it cannot be said to be binding upon the Dist.Judge. If the object of the scheme is to confer powers of appointment on the

Dist.Judge alone, who is a judicial officer, then, any decision with regard to appointment and re-appointment of Trustees taken by the Trust cannot take away that power. Therefore, a Dist.Judge being placed in this position he is not bound to accept any resolution of the Trust. The decision of the Trustees is subject to the power and authority of the Dist.Judge under the scheme, is the submission of the petitioners under challenge before me. Therefore, it is futile to contend that merely because the resolution of the Trustees is not challenged, the petition must be dismissed. The plea of acquisance or estoppel cannot be raised by Mr.Dani as it is well settled that there is no estoppel against a statute or law or statutory obligation. In the facts and circumstances of the present case, right to assail the decision of the learned Dist. Judge in writ jurisdiction is not affected in any manner.

21. Equally untenable is the contention of Mr.Dani that entertaining the present petition under Article 226 and 227 of the Constitution of India, considering the challenge raised therein, would amount to interfering in the internal management and administration of the Sansthan/ Trust. It is well settled that fundamental right guaranteed by the Constitution to manage religious affairs is not absolute and with regard to secular matters, viz., administration of Religious Trust, it is open for the State to regulate them by law. The distinction is clear. The distinction between matters of religion and administration and management of Religious Institutions, which is of secular character, has always been maintained and when this Court exercises its power to issue prerogative writs or its supervisory jurisdiction, it is not interfering with matters of religion. The objection of Mr.Dani overlooks this fundamental difference and distinction.

22. Now, the rival contentions. Mr.Matkar and Mr.Kulkarni, appearing for respective petitioners have urged that the Dist.Judge, Pune acted with undue haste and without following provisions of the scheme pertaining to the Trust. In their submission, the directions issued by the Dist.Judge are not in consonance with the scheme and in fact sets the same at naught completely. In their submission, by a letter dated 25th April 2005, the learned Dist.Judge had called for names of total 25 nominees. At that time, he chose to ignore the resolution No.4427 dated 28th October 2003. Thus, he deviced a procedure of calling names of five nominees per each vacancy. As to what compelled him to drop this process is not clear at all from the order under challenge. They submit that after the directions of this Court, the Charity Commissioner appointed temporary Trustees. In those proceedings consent was given by the Trust through Chief Trustee.

Even then, reliance could be placed upon the list of 24 persons submitted vide letter dated 22nd June 2004. Hence, there is no question of relying upon earlier resolution dated 28th October 2003. Mr.Kulkarni and Mr.Matkar placed strong reliance upon the letter dated 22nd June 2004. It is their submission that the order of the Dist.Judge, in the facts and circumstances of the present case, is wholly vitiated by apparent error on the face of record. He ignores the scheme in material particulars. The exercise of power is not in accordance therewith. The learned Judge has fallen back on the resolution of the Trustees and has ignored the mandate of Clause 3 of the scheme which is impermissible. More so, when the Dist.Judge had himself called for names from the Trustees. In these circumstances, without waiting for some time and thereafter proceeding in accordance with the scheme, the learned Judge suddenly decides to accept the resolution of the Trustees dated 28th

October 2003. This is impermissible in law.

23. It is their contention that one Lohar Ramchandra retired as Trustee on 1st October 2001 after completing his seven years' tenure. Two more Trustees viz., Joshi and Jadhav retired with effect from 18th October 2003 and 8th December 2003 respectively. Thereafter, remaining trustees passed resolution No.4427 on 28/10/2003 for re-appointment of Mr.Joshi and Jadhav as per the provisions laid down for re-appointment under the scheme. This resolution was subsequently forwarded to Dist.Judge Pune who, according to petitioners, is appointing authority of Trustees. No action was taken by the learned Judge to fill up the vacancy and there were only three Trustees to look after the management of the Trust on day to day basis. Even the Trust was not functioning smoothly at the relevant time when this was brought to the notice of the Dist.Judge, no decision was taken. Therefore, Chief Trustee had

to approach the Charity Commissioner and he instituted Application No.2 of 2005 on 28th January 2005 for appointment of Trustees on temporary basis to fill up the vacancies of three trustees.

24. The contention of the Chief Trustee was that remaining two Trustees were not cooperating in the administration of Sansthan. Therefore, it was necessary to appoint three trustees immediately so as to manage day to day affairs of the Trust. In this view of the matter, appointment of temporary Trustees was sought. Prior thereto, Chief Trustee had submitted a list of in all 24 persons to enable learned Dist.Judge to make appointment of three trustees. A purshis (Exh.61) was filed by the Chief Trustee and one of the petitioners by which it was agreed that out of list of 24 persons, they have no objection to fill three vacant posts of trustees except Mr.Nandkumar. In these circumstances, the order

dated 1st April 2005 came to be passed by the Charity Commissioner. The Charity Commissioner had directed the Chief Trustee to request the Dist.Judge to make regular appointment in accordance with the provisions of the scheme within a period of six months from the date of order. In these circumstances, the Dist.Judge ought not to have gone by what the existing trustees had in mind but should have strictly followed the scheme and that having not been done, the order needs to be set aside.

25. Additional contention raised by Mr.Kulkarni is that the order under challenge ignores basic aspects. In his submission, the power of appointment is to be exercised by selection. The eligibility has to be considered. The power is to be exercised by selecting candidates who are nominated by the existing board of trustees. The trustees are obliged to name five persons for each vacant post. It is

thus, clear that when the Trustees choose to re-appointment someone that decision is not binding upon the Dist.Judge. Additionally, there are no reasons assigned in the impugned order as to why the learned Dist.Judge has not thought it fit to follow the scheme.

26. On the other hand, Mr.Dani contends that the order of the Dist.Judge does not warrant any interference. As urged as above, he submits that this Court is not exercising appellate powers. He submits that there are allegations against the present petitioners of mismanagement and non cooperation. These persons are not fit to be appointed. These persons do not have any right and on their insistance the order should not be set aside. He invites my attention to the observations of the learned Dist.Judge in that behalf.

27. For appropriately appreciating the rival

contentions, it is necessary to refer to the scheme and relevant clauses thereof. As far as the scheme is concerned, it reads thus:-

> "1. The scheme may be called "Shree Dnyaneshwar Maharaj Sansthan, Alandi, Scheme, 1852.
>
> 2. The management of the Sansthan shall be vested in a committee of six persons to be called panchas or trustees of the said sansthan. The committee shall elect one of the trustees as the Sarpanch.
>
> 3. Any vacancy in the Committee shall be filled up by the Dist.Judge, Pune (as a persona designata) from among those nominated for co-option by the Committee - provided that the committee do nominate not less than five names for

each vacancy that may occur, the Dist.Judge having the right to call for further names from the Trustees, if necessary and provided further that the following persons shall not be eligible to act as Trustees viz.,

a) A person who is not a Hindu by birth and religion.

b) A person who is less than 21 years and not more than 70 years of age.

c) A person who is of unsound mind.

d) A person who is an undischarged insolvent;

e) A person who holds any

interest which is adverse to the Sansthan;

f) A person who does not ordinarily resides within the limits of the Poona Dist.

g) A person who is convicted of an offence involving moral turpitude;

h) A person who holds any office of a hereditary servant, a Varasdar, a Sevekari or Hakdar in the Sansthan or receives or is entitled to receive any amoluments in this behalf;

3A. The tenure of office of a Trustee shall be seven years subject to his reappointment thereafter. The present

trustees shall be deemed to have been appointed under the present scheme but the amended clause (3b) shall not apply in their case and the tenure of the present incumbents shall be deemed to run from the date of the Dist.Judge’s order dated 11th December 1937.

28. A bare perusal of the scheme, therefore, demonstrates that the management of Sansthan vests in a committee of persons to be called Panchas or Trustees. The committee shall elect one of the Trustee as Sarpanch. Any vacancy shall be filled in by the Dist.Judge Pune from among those nominated for cooption by the Committee provided that the Committee nominates not less than five names for each vacancy. Further the Dist.Judge is given a right to call for additional names from the Trustees, if necessary. The eligibility criteria is also provided in the scheme.

29. Clause 3-A gives a tenure of office of trustee and that is seven years. However, that is subject to re-appointment. The present Trustees by a deeming fiction were appointed under the scheme but the clause 3(b) was not to apply to them. Thus, a Trustee can be re-appointed. However, appointment and re-appointment is something which is to be done by the Dist.Judge. It, therefore, cannot be said that re-appointment is in the hands of the Trustees and it is only initial appointment which is made by the Dist.Judge. Both have to be by the Dist.Judge, as the sole appointing authority. This is clear from clause 3, which provides for filling up of vacancy as well. The vacancy has to be filled in by the Dist.Judge from among those nominated for cooption by the Committee. However, the Committee is obliged to forward five names for each vacancy. That exercise or action of the Trustees or list forwarded by them is not

binding upon the Dist.Judge, who can call further names. In other words, Dist.Judge is not obliged to appoint or nominate or coopt persons whose names have been forwarded by the Trustees as he is empowered to call for further names in case he is not satisfied with the list. The contention is that in the present case, the Dist.Judge has put his stamp of approval and re-appointed persons desired by the Trustees and that action is not in accordance with the scheme. In other words, Trustees did not forward five names for the vacancy caused by the expiry of tenure of the abovementioned trustees. Trustees plainly sought their re-appointment. They did not forward any other names, is the contention.

30. To appreciate that aspect, it is necessary to refer to some facts. Both sides do not dispute the existence of the resolution. The Resolution No.4407/03 is passed by the Trustees. Perusal of this resolution and the covering

letter forwarding the same is that one of the respondents, who is now re-appointed as Trustee, according to Trustee, S.V.Joshi, is recommended for his contribution. Similarly, the Trust recommends name of Mr.Jadhav as well because he is lawyer by profession and assisted the trust in legal matters. The resolution, therefore, recommends their re-appointment. Parties also do not dispute existence of a visit by the then Dist.Judge Pune and a letter addressed on 4th June 2004 by the Dist.Judge to the Trustees and more particularly seeking clarification from the managing trustee with regard to several issues and matters. One of the items enlisted therein is with regard to forwarding of names of persons for appointment as Trustees. That communication has been replied to by the managing trustees on 22nd June 2004 and applications received till that date have been forwarded. It appears that the list contained 24 names.

31. It is also clear from a perusal of the documents produced on record that on 28th January 2005, an application was made by the Managing Trustee, pointing out that there are vacancies and the same have not been filled in. The letter categorically states that a requisition has been received by the Trustees from the Dist.Judge calling for the names/applications to be forwarded to him but no appointments have been made till that date. He has categorically stated that there are only three trustees and two out of them are not cooperating because he has complained about their misconduct and mis-deeds to the Charity Commissioner and Dist.Judge. He, therefore, requested the Charity Commissioner by this letter to make temporary appointments and pass such other orders as Charity Commissioner deems fit and proper in exercise of his powers under Section 47. Section 47 of the Bombay Trust Act reads as under:-

"47. Power of Charity Commissioner to appoint, suspend, remove or discharge trustees and to vest property to new trustees:-

(1) Any person interested in a public trust may apply to the Charity Commissioner for the appointment of a new trustee, where there is trustee for such trust or the trust cannot be administered until the vacany is filled, or for the suspension, removal or discharge of a trustee, when a trustee of such trust:-

(a) disclaims or dies;

(b) is for a continuous period of six months absent from India without the leave of the Charity Commissioner or the Deputy or Assistant Charity Commissioner or the officer authorised by the State Government in this behalf;

(c) leaves India for the purpose of residing abroad;

(d) is declared as insolvent;

(e) desires to be discharged from the trust;

(f) refuses to act as a trustee;

(g) becomes in the opinion of the Charity Commissioner unfit or physically incapable to act in the trust or accepts a position which is inconsistent with the position as Trustee;

(h) in any of the cases mentioned in Chapter III, is not available to administer involving moral turpitude.

(i) is convicted of an offence punishable under this Act or an offence involving moral turpitude;

(2) The Charity Commissioner may, after hearing the parties and making such enquiry as he may deem fit, by order appoint any person as a trustee or may also remove or discharge any trustee for any of the reasons specified in sub-section (1).

(3) In appointing a trustee under sub-section (2) the Charity Commissioner shall have regard:-

(a) to the wishes of the author of that Trust;

(b) to the wishes of the persons, if any, empowered to appoint a new trustee;

(c) to the question whether the appointment will promote or impede the execution of the trust;

(d) to the interest of the public or the section of the public who have interest in the trust; and

(e) to the custom and usage of the trust;

(4) It shall be lawful for the Charity Commissioner upon making any order appointing a new trustee under sub-section (2) either by the same or by any subsequent order to direct that any property subject to the trust shall vest in the person so appointed and thereupon

it shall so vest.

(5) The order of the Charity Commissioner under sub-section (2) shall be deemed to be the decree of the Court and an appeal shall lie therefrom to the High Court."

32. In other words, Trustees are also very well aware that they could not have made any appointments and whether any person should be re-appointed is something which the Dist.Judge alone can decide. The request to the Charity Commissioner was to make temporary arrangement.

32. That the Dist.Judge is also aware of the above position is clear from his communication dated 25th April 2005, which calls upon the Chief Trustee to forward names of five persons per vacancy at the earliest. Now, in the light of

these documents if the order under challenge is perused, it is apparent that the Dist.Judge was aware of the communications as also the order of the Charity Commissioner making temporary arrangement. It is clear from the following observations in the order:-

> " .... He by his order dated 1/4/2005 has temporarily appointed three trustees namely (1) Shri Ashok Ramrao Palande, (2) Shri Vasant Dnyaneshwar Patil, and (3) Shri Balasaheb (Vasudev) Dattatraya Zanjale with the directions that within the period of six months from the date of this order, Chief Trustee and/or other Trustees shall request Hon'ble Dist.Judge, Pune to make appointment of three trustees in accordance with the provisions of "Shree Dnyaneshwar Maharaj Sansthan Alandi Scheme 1852" and till appointment of

> three trustees in accordance with the scheme are made by the Hon'ble Dist.Judge, Pune, aforesaid newly appointed three trustees are entitled to work as trustees of the Sansthan and look after the management and the administration of the Sansthan. It is obvious that by virtue of the order of the learned Charity Commissioner, Mumbai, stop gap or temporary arrangement has been made by making temporary appointment of the abovenamed three trustees."

33. Thereafter, he is also aware that he has to make appointment by taking recourse to Clause 3 and 3A of the scheme. However, in the final conclusion that he reaches viz., re-appointment of Mr.Joshi and Jadhav for filling up two vacancies, he assigns following reasons:-

> "3. It is my firm belief that in view

of the provisions of Rule 3A of the Scheme, it is necessary to reappoint Shri Sudhakar Waman Joshi and Pratap Sarjerao Jadhav for filling up two vacancies of the trustees out of three. Therefore, there appears to be no hurdle in the way of reappointment of Shri Sudhakar Waman Joshi and Shri Pratap Sarjerao Jadhav as Trustees of the Trust and to give effect to and implement the Resolution of 4427 of the Trust in their respect. In order to fill up one vacancy of trustee of the Trust, it is expected that the Chief Trustee will submit the list of 5 eligible persons for my consideration for appointing one trustee of the Trust. For that purpose, it is necessary to discharge three temporary trustees namely (1) Shri Ashok Ramrao Palande (2) Shri Vasant Dnyaneshwar Patil, and (3) Balasaheb (Vasudeo) Dattatraya Zanjale.

> Although the learned Charity Commissioner in his order dated 1.4.2005 has directed the Chief Trustee and/or other trustees that they shall request the Dist.Judge, Pune to make appointment of three trustees, the Chief Trustee and/or other trustee have not taken any steps."

34. In my view, the petitioners are right in their contention that Dist.Judge has adhered to the scheme, if at all, only in part. As far as five names that he seeks from the Trustees it is only with regard to filling up of one vacancy out of three. With regard to two vacancies, he re-appoints Mr.Joshi and Mr.Jadhav straight away. That he relies only upon Resolution of the Trust is clear from the above quoted observations.

35. If that is the conclusion he had to reach, then, there was no occasion for him to call for names with regard to all three

vacancies. That he invited names of interested persons/applications with regard to all the three vacancies is apparent from the communications dated 4th June 2004 and 25th April 2005. That the Charity Commissioner had only made temporary arrangement is also clear from his observations quoted by me above. Thus, having initiated process for filling up the vacancies in accordance with the scheme, there is no justification on the part of the learned Dist.Judge to have abandoned the same, midway. He assigns no reasons for re-appointing the Trustees, who had already completed their tenure of seven years.

36. In my view, the Dist.Judge would have been well advised in implementing his own decision. It is the same learned Judge who addressed a letter dated 25th April 2005. There he calls for names of three persons to fill up vacancies. He was fully aware of the decision of

the Trustees taken by Resolution referred to above. However, that alone is not decisive is also something which he is fully aware of and it is clear from the text of the letter. That a temporary arrangement is made by the Charity Commissioner is also something which is within his knowledge. In these circumstances, the order of the learned Dist.Judge dated 16th July 2005 is patently erroneous, being contrary to the scheme and his own communications and actions. It is, therefore, difficult to sustain the same. Rule will have to be made absolute in each of the petitions by setting aside this order and directing that Mr.Jadhav and Joshi who have been appointed on temporary basis would continue only till such time as the learned Dist.Judge completes the exercise of appointment of trustees in accordance with the scheme. Accordingly, following order:-

a) The impugned order dated 16th

July 2005 is set aside;

b) Learned Dist.Judge to take steps to appoint trustees and for that purpose, he shall take into consideration the list of 24 persons forwarded by Trustees vide communication dated 22nd June 2004.

c) If the learned Judge is of the view that the ratio of five names per each vacancy which is required to be maintained, cannot be maintained, as the persons whose names are included in the list of 24 are otherwise ineligible, then, it will be open for him to call for fresh names/applications.

d) In any event, the learned Judge to strictly abide by the scheme and more particularly clauses 3 and 3A.

d) Entire exercise to be completed within a period of three months from the date of receipt of this order. Till the same is completed as above, the existing Trustees shall carry on day to day management and no major policy decisions will be taken by them. Rule is made absolute accordingly. In the circumstances of the case, there will be no order as to costs.

(S.C.DHARMADHIKARI, J)